NO. 20812

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROBERT FRANCIS BEAN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

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TOPICAL INDEX

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I

STATEMENT OF PLEADINGS AND FACTS DISCLOSING JURISDICTION

On February 10, 1965, the Federal Grand Jury for the Southern District of California returned an indictment in one count charging a violation of Title 18, United States Code, Section 2312 in that Robert Francis Bean transported a stolen 1957 Kenworth Tractor, a motor vehicle, in interstate commerce from Nogales, Arizona to San Bernardino County, California, within the Central Division of the Southern District of California, knowing said vehicle to have been stolen.

Pursuant to appellant's motion on April 5, 1965, Dr. A. R. Tweed was appointed by the District Court to examine appellant to determine his mental competency to stand trial and whether he was insane at the time of the commission of the offense. On May 27, 1965 a hearing was held to determine appellant's competency to stand trial. The Honorable Charles H. Carr, United States District Judge, found that on the basis of Dr. Tweed's report, the defendant was presently insane, unable to understand the proceedings against him, and unable to properly assist in his own defense. The defendant was ordered committed to the custody of the Attorney General, pursuant to Title 18, United States Code, Section 4246. Appellant was committed to the Federal Hospital in Springfield, Missouri and on December 13, 1965, another hearing was held to determine his competency to stand trial. At this hearing, appellant was found to be mentally competent. Defendant pleaded not guilty and a waiver of jury was filed. Trial before the Honorable Peirson M. Hall, United States District Judge, was commenced on January 3, 1966. On that day, the court found appellant guilty of violating Title 18, United States Code, Section 2312, and sentenced him to serve a 5-year term of imprisonment under Title 18, United States Code, Section 4208(a)(2). On January 14, 1966, appellant filed a timely notice of appeal.

Jurisdiction of the District Court was based on Title 18, United States Code, Section 3231 and Title 18, United States Code, Section 2312. Jurisdiction of this court is based on Title 28, United States Code, Section 1294(1) and Rule 37(a) of the Federal

Rules of Criminal Procedure.

II

STATUTES INVOLVED

Title 18, United States Code, Section 2312, reads as follows:

> "Whoever transports in interstate or foreign commerce a motor vehicle or aircraft, knowing the same to have been stolen, shall be fined not more than $5,000 or imprisoned not more than five years, or both."

III

QUESTIONS PRESENTED

A. Was there sufficient evidence offered at trial for the trier of fact to conclude that defendant was sane at the time of the commission of the offense.

B. Was there sufficient evidence for the trier of fact to conclude that appellant was competent to waive his right to counsel when interrogated by agents of the FBI concerning the instant offense.

IV

STATEMENT OF THE FACTS

The essential facts surrounding the commission of this offense are not in dispute. On or about January 22, 1965, in Nogales, Arizona, the defendant stole a diesel tractor used for the transportation of produce by semi-truck and trailer. He drove the tractor to California and was arrested in possession of the vehicle in Needles, California, on January 25, 1965. The defendant admitted these facts to Agent Harold Newpher of the Federal Bureau of Investigation on January 27, 1965 [R. T. 6, 8, 9, 10, 11]. 1/

Solely at issue in the trial and on this appeal are the defendant's mental competency at the time he made statements to agents of the Federal Bureau of Investigation and his sanity at the time of the commission of the offense. On this issue a psychiatrist, Dr. Andre R. Tweed, testified for the defendant at trial. Other evidence before the court included testimony of lay witnesses who had contact with the defendant at or about the time the offense was committed, the statements of Dr. Tweed on cross-examination and medical reports from the Medical Center at Springfield.

1/ R. T. refers to Reporter's Transcript of Record.

V

ARGUMENT

A. THERE WAS SUFFICIENT EVIDENCE OFFERED AT TRIAL FOR THE COURT TO CONCLUDE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT WAS SANE AT THE TIME OF THE COMMISSION OF THE OFFENSE.

The court heard testimony from Agent Harold Newpher in which he related a conversation between himself and defendant on January 27, or two days subsequent to the commission of the offense. The interview lasted approximately two hours and the agent had ample opportunity to observe the defendant's manner and demeanor [R. T. 7].

Agent Newpher noticed nothing unusual about the defendant's speech, his reactions to questions, or his general demeanor [R. T. 7]. The defendant appeared to be in possession of his senses and to know what was going on, what was said to him, and where he was [R. T. 7]. He was oriented as to time and place and in the agent's opinion understood the subject of the conversation [R. T. 8].

After being advised of his rights, the appellant related the circumstances surrounding the offense in detail [R. T. 9]. He remembered and related specific dates, places, and times, relating his activities two days prior to the theft and two days subsequent [R. T. 9, 10, 11]. The defendant also told the agent that he eventually intended to take the vehicle to Alabama and register the

vehicle in his own name [R. T. 11].

Significantly, the defendant traced on a map the circuitous route that he followed while transporting the stolen vehicle, and pointed out to the agent that he took this roundabout way in order to avoid being seen in the vehicle [R. T. 11].

The defendant also said that he did not know who owned the vehicle [R. T. 11].

On cross-examination the agent said that the appellant was not belligerent at any time during the interview and that he was able to verify a portion of the defendant's story concerning his leaving another stolen truck in Nogales, Arizona prior to taking the vehicle involved in the instant offense [R. T. 15]. The defendant's statements as to various items he left in this truck were also verified [R. T. 28].

Agent Albert Carlbloom of the Federal Bureau of Investigation testified to a conversation between he and the defendant on March 4, 1965. Defendant told Mr. Carlbloom that he had come to Nogales, Arizona in January, 1965. He said that he arrived there with a 1958 Ford pickup and related to the agent the license number of the truck and some personal items that he had left inside it [R. T. 19].

On March 9, Mr. Carlbloom had another conversation with the appellant. During this conversation, the defendant appeared to be rational and his responses were relevant to the agent's questions [R. T. 21]. After again being advised of his rights, the defendant related the circumstances of the theft of the tractor and

his subsequent journey with it [R. T. 21].

On cross-examination the agent testified that the defendant had told him that he had stolen the Ford pickup truck which he had abandoned in Nogales prior to the tractor theft. It was verified that the truck had indeed been stolen in Nevada [R. T. 23].

Dr. Andre R. Tweed testified that the appellant did not have the capacity to understand the nature and quality of his acts and did not know right from wrong at the time the offense was committed. However, on cross-examination the doctor said that the appellant obtained the vehicle voluntarily and with intent to deprive the owner of possession and ownership of it [R. T. 34: 10-14]. He also testified that the appellant was aware that the law prohibited the act he committed and that he knew that he was prohibited by law from taking and transporting the vehicle [R. T. 35:8-11]. The doctor also said that the appellant knew the difference between right and wrong but not in the same way as the doctor and the prosecutor [R. T. 38:23-25].

It is clear that the trier of fact is not required to accept the opinion of experts nor to reject those of lay witnesses in determining whether the defendant is insane. Brown v. United States (5th Cir. 1965), 351 F. 2d 473.

Since appellant did not contend at the trial, and does not do so now, that his act was the result of an uncontrollable act or irresistible impulse, the issue is whether he knew the nature and quality of the act he committed and whether he knew it was wrong. From the foregoing facts, it can be seen that there was ample

evidence, taking the view most favorable to the government, upon which to base a finding that the defendant was sane. Therefore, the verdict of the trial judge as the sole trier of fact in this case must be sustained.

Fraker v. United States, 294 F.2d 859, 861 (9th Cir. 1961).

Nor do the medical reports from the Springfield Medical Center, prepared as part of a complete study between June and September of 1965, aid the appellant in this regard. Most of the information cited in appellant's brief at pages 7 and 8 was given by appellant's mother. The classification study reveals that the mother was quite elderly and the information that she had was limited [M.R. 6]. Other information was given by the appellant, who the report says "has given incorrect information, misleading information, and has withheld information" and who "is bright enough to be skillful about working to his own advantage" [M.R. 6].

Although the patient had given a detailed account of the offense to Mr. Newpher two days after its commission, he professed amnesia as to those events when he spoke with doctors at Springfield. The period just prior to the present offense was the only real memory deficit indicated [R.T. 16, 20], and the staff psychiatrist felt that the patient "might be trying to appear somewhat more disturbed than he may actually be" [R.T. 16]. The staff psychologist noted that the patient was not grossly disorganized and that his contact with reality was sufficiently good to allow him

to respond in a socially acceptable manner when it is to his benefit [M. R. 19]. The entire report smacks heavily of malingering on the appellant's part, a fact of which the trial court was aware [R. T. 36]. Additionally there is nothing in the report to indicate that the appellant was anything more than a borderline psychotic with a mild brain syndrome or that he did not know the difference between right and wrong or the nature and quality of his act.

B. EVIDENCE WAS SUFFICIENT FOR THE TRIER OF FACT TO CONCLUDE THAT APPELLANT WAS COMPETENT TO WAIVE HIS RIGHT TO COUNSEL.

There is no contention that appellant was not apprised of his right to silence and counsel before making statements admitted into evidence. Appellant argues that he was not mentally competent to waive his right to counsel before he spoke with agents. The evidence outlined under Point I of this brief is sufficient for the trier of fact to conclude that appellant was mentally competent to waive his right to counsel and to voluntarily speak with agents. Additionally, Dr. Tweed testified on cross-examination that at the time of the interviews the defendant knew he was talking to law enforcement officials, and that they were involved in an investigative function relating to a criminal statute [R. T. 39]. Dr. Tweed also said that the defendant was aware of his right to an attorney and his right to remain silent [R. T. 40].

CONCLUSION

Since there is substantial basis in the evidence for the trial court's verdict and rulings, the judgment below should be affirmed.

Respectfully submitted,

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CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

/s/ Michael D. Nasatir

MICHAEL D. NASATIR